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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/704,434	11/02/2000	Yuichi Yamagami	2271/62705	4780

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Ivan S Kavrukov
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, NY 10036

EXAMINER

COSIMANO, EDWARD R

ART UNIT PAPER NUMBER

3629

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/704,434

Applicant(s)

YAMAGAMI ET AL.

Examiner

Edward R. Cosimano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Applicant should note the changes to patent practice and procedure:
 - A) effective December 01, 1997 as published in the Federal Register, Vol 62, No. 197, Friday October 10, 1997;
 - B) effective November 07, 2000 as published in the Federal Register, Vol 65, No. 54603, September 08, 2000; and
 - C) Amendment in revised format, Vol. 1267 of the Official Gazette published February 25, 2003.
2. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification or drawings. Applicant should note the requirements of 37 CFR § 1.74, § 1.75, § 1.84(o,p(5)), § 1.121(a)-1.121(f) & § 1.121(h)-1.121(i).
3. Claims 1-16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - 3.1 In regard to claims 1-16, although one of ordinary skill at the time of the invention would know how to accomplish the recited actions/functions from the language of these claims, one of ordinary skill could not determine from the language of these claims whether or not they are making and/or using the claimed invention, since from the language of these claims it is unclear:
 - A) in regard to claim 1, it is noted that:
 - (1) lines 5-8 are directed to determining first shipping charges from a number of different supplier locations to a customer; and
 - (2) lines 9-12 are directed to determining second shipping charges from a number of different virtual supplier locations to a customer;where the different supplier locations (see (A)(1)) are different from the different virtual supplier locations, (see (A)(2)). Further, lines 13-14, determine a number of differences between the first and second shipping charges, while line 15 recites an intended field of use in that the differences are used to manage shipping charges. Since

a field of use is not a positively recited limitation that would: (a) affect how the remainder of the claimed invention would operate/function; or (b) indicate how the remainder of the claim would be actually used to accomplish the recited field of use; or (c) that the remainder of the invention is actually used to accomplish the intended field of use; and hence whether or not a particular use of the recited differences is within the scope of the invention. Therefore, the instant claim does not particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 2-5 which merely define where the various locations are do not affect the above determination.

B) in regard to claim 6, it is noted that:

(1) lines 4-8 are directed to consolidating orders for a number of customers into an international shipment from a first country;

(2) lines 9-10 are directed to using a first shipping entity to ship the consolidated shipment to another country;

(3) lines 11-14 are directed to dividing the consolidated shipment into each customer's order and then shipping the order to the customer using a second shipping entity;

(4) lines 15-16 are directed to providing first shipping charge as the actual shipping charge for one of the shipping entities; and

(5) lines 17-19 are directed to determining a second shipping charge from a virtual location in a second country to said customers.

Further, lines 20-21, determine a difference between the first and second shipping charges, while line 22 recites an intended field of use in that the differences are used to manage shipping charges. Since a field of use is not a positively recited limitation that would: (a) affect how the remainder of the claimed invention would operate/function; or (b) indicate how the remainder of the claim would be actually used to accomplish the recited field of use; or (c) that the remainder of the invention is actually used to accomplish the intended field of use; and hence whether or not a particular use of the recited differences is within the scope of the invention. Therefore, the instant claim

does not particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 7-12 which merely define the nature of the shipping charges and claim 13 which is directed to comparing shipping charges over a period of time, do not affect the above determination.

C) in regard to claim 14, it is noted that:

(1) lines 9-12 are directed to consolidating received order information for a number of customers into a shipment from a first country;

(2) lines 13-19 are directed to database containing information regarding (a) shipping fees; (b) for dividing a consolidated shipment into each customer's order; and (c) shipping the individual order to the customer;

(3) lines 20-25 are directed to using the above information and the database to calculate a bill amount comprising the shipping charge and the cost of the items in the order; and

(5) lines 26-29 are directed to determining a differences in the shipping charge from a subset of the ordered items.

Further, line 29, recites an intended field of use in that the differences are used to manage shipping charges. Since a field of use is not a positively recited limitation that would: (a) affect how the remainder of the claimed invention would operate/function; or (b) indicate how the remainder of the claim would be actually used to accomplish the recited field of use; or (c) that the remainder of the invention is actually used to accomplish the intended field of use; and hence whether or not a particular use of the recited differences is within the scope of the invention. Therefore, the instant claim does not particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 15-16 which merely define the nature of the shipping charges, do not affect the above determination.

Therefore, applicant has failed to particularly point out and distinctly claim the invention as required by 35 U.S.C. § 112, second paragraph.

3.2 Claims 1-16 are inoperative and therefore lack utility for the recited purpose of the disclosed and claimed invention, since:

A) each of claims 1 & 6, recite the function of “managing shipping charges”, however, in regard to claims 1 & 6, since the final line of these claims fails to require that the “computer difference” is used in any manner that one of ordinary skill would recognize as the action/function of “managing shipping charges”, these claims do not accomplish the intended purpose of “managing shipping charges” as recite in these claims.

B) in regard to claim 14, recite the function of “tracking variances between freight charges” from a shipping entity, however, in regard to claim 14, since the difference in shipping charges is based on a change in the contents of the order being shipped (see lines 26-29 of claim 14) and not a change in the actual shipping fee for the same contents, the computed difference is not what one of ordinary skill would recognize as “variances between freight charges” and hence this claim does not accomplish the intended purpose of “tracking variances between freight charges” as recite in these claims.

For as the Court has specifically pointed out, claims must recite utility for the disclosed purpose of the invention, (General Electric Co. V. U.S., 198 U.S.P.Q. 65 (U.S. Court of Claims, 1978), Hanson v. Alpine Valley Ski Area 204 U.S.P.Q. 794 (District Court, E. D. Michigan, N. Div. 1978) and Banning v. Southwestern Bell Telephone C., 182 U.S.P.Q. 683 (SD Tex, 1974)).

3.3 Claims not specifically mentioned above, inherit the defects of the base claim through dependency. For the above reason(s), applicant has failed to particularly point out what is regarded as the invention.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.1 Claim 1 is rejected under 35 U.S.C. § 102(b) as being clearly anticipated by the American Gas article.

4.1.1 In regard to claim 1, the American Gas article discloses that shipping companies look at the computed difference between the estimated shipping cost, i.e. second shipping charges, and actual shipping costs, i.e. first shipping charges, in order to manage shipping charges by passing the computed difference on to shippers in next year's rating structure.

4.2 Claim 1 is rejected under 35 U.S.C. § 102(e) as being clearly anticipated by Arunapuram et al (2002/0019759).

4.2.1 In regard to claim 1, the Arunapuram et al ('759) discloses that shipping companies look at the computed difference between the estimated shipping cost, i.e. second shipping charges, based on various shipping parameters, for example size, weight, special handling, etc., and actual shipping costs, i.e. first shipping charges, based on various shipping parameters, in order to manage shipping charges by optimizing shipping cost passing on to the customers and thereby increase customer satisfaction. Further, Arunapuram et al ('759) disclose that shipping costs of moving a consolidated freight shipment from one or more origin points to the customer are appropriately allotted to customers.

5. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject

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matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(c) Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

5.1 Claims 2-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Arunapuram et al (2002/0019759) as applied to claim 1 and further in view of well established practice, note applicant's admissions in the paragraph between page 1, line 21, and page 2, line 7, "The assignee hereof has fully stocked as the overseas warehouse.", and Gerety.

5.1.1 In regard to the international shipping of claims 2, 3, 6-9 & 14, it is respectfully noted that many foreign built cars, electronic devices, etc, are shipped to different customers in the United States, via ship, plane, etc. from the foreign country that the item was manufactured in to a port of call in the U.S. as a consolidated shipment. After the consolidated shipment reaches the port of call, the items contained in the consolidated shipment are off loaded and then redistributed to the item's final destination by loaded the item(s) onto one or more second forms of transportation, for example, train, truck, etc. which are used to transport the item to it's final destination, where either of these transportations may include one or more legs with intermediate destinations. In this regard, the total transportation cost would be the sum of the transportation costs for each individual carrier and associated fees

5.1.2 In regard to the use of the item's weight in claims 4, 11 & 16, one of the shipping parameters of Arunapuram et al ('759) is weight.

5.1.3 In regard to the use of zones in claims 5, 10, 12 & 16, note Gerety which in 1986 discloses the use of a zone based structure for rating freight costs between various origins and destinations.

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5.1.4 In regard to claims 13 & 15, it is noted that the purpose of Arunapuram et al ('759) is to find the optimal transportation plan which inherently would include repeated calculations of transportations costs on a routine basis.

6. 35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

6.1 Claims 1-16 are rejected under 35 U.S.C. § 101 because the invention as claimed is directed to non-statutory subject matter, since they lack substantial and practical utility.

A) it is respectfully noted that claims 1-13 lack are inoperative and lack utility for the reason set forth above in section (3.2)(A); and

B) it is respectfully noted that claims 14-16 lack are inoperative and lack utility for the reason set forth above in section (3.2)(B);

In view of the above, it is considered that the invention of claims 1-16 lack substantial and practical utility.

6.2 Claims 1-16 are rejected under 35 U.S.C. § 101 because the invention as claimed is directed to non-statutory subject matter.

6.2.1 As set forth by the Court in:

A) In re Musgrave 167 USPQ 280 at 289-290 (CCPA 1970), "We cannot agree with the Board that these claims (all the steps of which can be carried out by the disclosed apparatus) are directed to non-statutory processes merely because some or all of the steps therein can also be carried out in or with the aid of the human mind or because it may be necessary for one performing the process to think. All that is necessary, in our view, to make a sequence of operational steps a statutory "process" within 35 U.S.C. 101 is that it be in the technological arts so as to be in consonance with the Constitutional purpose to promote the progress of "useful arts." Cons. Art. 1, sec. 8.", {emphasis added}; and

B) In re Sarkar 100 USPQ 132 @ 136-137 (CCPA 1978), echoing the Board of Appeals stated in regard to claim 14 “14. A method of locating an obstruction in an open channel to affect flow in a predetermined manner comprising:

a) obtaining the dimensions of said obstruction which affect the parameters of flow;

b) constructing a mathematical model of at least that portion of the open channel in which said obstruction is to be located in accordance with the method of claim 1 using those dimensions obtained in step (a) above;

c) adjusting the location of said obstruction within said mathematical model until the desired effect upon flow is obtained in said model; and thereafter

d) constructing said obstruction within the actual open channel at the specified adjusted location indicated by the mathematical model.”;

and “Concerning claims 14-39 and the significance of "post-solution activity," like building a bridge or dam, the board concluded: While it is true that the final step in each of these claims makes reference to the mathematical result achieved by performing the prior recited steps, we consider the connection to be so tenuous that the several steps recited in each claim when considered as a whole do not constitute a proper method under the statute.”, {emphasis added}.

6.2.2 Further, it is noted in regard to claims 14-39 of Sarkar, although step (d) of claim 14 of Sarkar references the result of step (c) of claim 14 of Sarkar it is clear from the language of step (c) of claim 14 of Sarkar that multiple adjustments to the location of the obstruction are required to be made until a location with the desired effect has been determined. Hence, the reference to constructing the obstruction at the “specified adjusted location” in step (d) of claim 14 of Sarkar is vague, indefinite and unclear in regard to which one of the possible multiple adjusted locations of the obstruction that were used during step (c) of claim 14 of Sarkar would be used when constructing the obstruction as required by step (d) of Sarkar.

Therefore, without a clear connection between step (d) of Sarkar and the remaining steps of claim 14 of Sarkar, the Board of Appeals and the Court held that these claims were not a process within the meaning of process as used in 35 U.S.C. § 101 and hence were directed to non-statutory subject matter.

6.2.3 As can be seen from claims 1-13, these claims are directed to a series of steps/actions/functions and claims 14-16 are directed to a method and system in which as set forth above in regard to the rejection of claims 1-16 under 35 U.S.C. § 112 2nd paragraph, the recited limitations are not clearly interconnected to one another and therefore do not provide a useful method/process within the meaning of process as used in 35 U.S.C. § 101.

6.3 Claims 1-16 are rejected under 35 U.S.C. § 101 because the invention as claimed is directed to non-statutory subject matter.

6.3.1 The instant claims recite a system, (claims 14-16), and a method comprising a series of steps to be performed on a computer, (claims 1-13), which have a disclosed practical application in the technological/useful arts. Further, the instant claims do not merely define either a computer program, a data structure, non-functional descriptive material, (i.e. mere data) or a natural phenomenon.

6.3.2 In regard to claims 1-3, the invention as set forth in these claims merely describes:

A) an operative method that does not provide a claimed practical application of the results of the manipulations, see above in section (((3.1)(A,B)),((3.2)(A))); and

B) an operative system that does not provide a claimed practical application of the results of the manipulations, see above in section (((3.1)(C)),((3.2)(B))).

Therefore, the process/system as recited in these claims does not apply the result of either the claim as a whole or the manipulations of data as recited in these claims in such a manner so as to be tangibly used in a concrete manner and hence to produce a useful concrete and tangible result, that is a tangible application within the technological/useful arts..

6.3.3 It is further noted that applicant has not recited in the claims a specific process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, which is either altered or changed or modified by the invention recited in claims.

6.3.4 It is further noted in regard to claims 1-16, that as claimed applicant has not claimed:

A) pre computer processing, since the claims fail to recited that the data, which originates from an unknown source, is manipulated or transformed/changed before it is processed; or

B) post computer processing, since the claims fail to recited that the data which represents the result of the claimed manipulation, is neither manipulated nor used nor changed by any device after it has been processed; or

C) a practical use of the claimed invention by any physical system or device or method outside of a statement of the intended use of the claimed invention; or

D) process steps or physical acts/operations that would affect the internal operation of a computer/machine as were found to be statutory in either In re McIlroy 170 USPQ 31 (CCPA, 1971) or In re Waldbaum 173 USPQ 430 (CCPA, 1972); or

E) process steps or physical acts/operations that would be considered as going beyond the manipulation of “abstract ideas” as were found to be non-statutory in In re Warmerdam 31 USPQ2d 1754 (CAFC, 1994); or

F) a concrete and tangible practical application of either:

(1) the invention as a whole; or

(2) the final results of the manipulations/actions with in the technological/useful arts as recited in the claims;

note In re Sarkar 200 USPQ 132 (CCPA, 1978) where the process step of “constructing said obstruction within the actual open channel at the specified adjusted location indicated by the mathematical model” was held to be so tenuous connected to the remaining process steps as to not be a process with in the scope of 35 U.S.C. § 101.

Hence, the invention of claims 1-16 is merely directed to an hypothetical mental exercise that manipulates an abstract idea of determining shipping charges with out a claimed concrete and tangible practical application, (note In re Beauregard 35 USPQ2d 1383 (CAFC 1995) and the associated claims of U.S. Patent 5,710,578; and State Street Bank & Trust Co. v. Signature Financial Group Inc. 47 USPQ2d 1596 (CAFC 1998)).

6.3.5 It is further noted that the type/nature of either the data or the calculated numbers does not affect the operation of the claimed invention and hence are considered to be non function

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descriptive material, (note In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983)).

6.3.6 In practical terms, claims define nonstatutory processes if they:

A) consist solely of mathematical operations without some claimed practical application (i.e., executing a “mathematical algorithm”); or

B) simply manipulate abstract ideas, e.g., a bid (Schrader, 22 F.3d at 293-94, 30 USPQ2d at 1458-59) or a bubble hierarchy (Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759),

without some claimed practical application.

6.3.7 In view of the above analysis claims 1-16 as a whole are directed to an hypothetical mental exercise that merely manipulates an abstract idea, and hence are directed to non-statutory subject matter.

6.4 Claims 1-16 are rejected under 35 U.S.C. § 101 because the invention as claimed is directed to non-statutory subject matter, since they fail to comply with the “requirements this title, namely 35 U.S.C. § 101, 35 U.S.C. § 102, 35 U.S.C. § 103 and 35 U.S.C. § 112 2nd paragraph as set forth above.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR § 1.136(a).

7.1 A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR § 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Response to applicant's arguments.

8.1 All rejections and objections of the previous Office action not repeated or modified and repeated here in have been over come by applicant's last response.

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8.2 As per the 35 U.S.C. § 102 and 35 U.S.C. § 103 rejections, since:

A) the prior art clearly discloses that when shipping or transporting items internationally using one or more carriers, there are various considerations to be made by the shipper, hence applicant's arguments are non persuasive.

B) the distinctions between the disclosed invention and the prior art are directed to unclaimed distinctions and merits, since these features do not appear in the claims, hence applicant's arguments are non persuasive.

C) the use of any planning in regard to a shipment would require the use of virtual origins to determine the best or lowest cost for the shipment, hence applicant's arguments are non persuasive.

9. The examiner has cited prior art of interest, for example:

A) Schuricht et al (5,070,463) which discloses that shipping charges for each item in an aggregate/consolidated shipment are determined from the weight, origin, destination, special service and the carrier to be used for each item in the consolidated shipment.

B) Machida et al (JP 04-115358) which discloses that an electronic file containing the specifications of goods to be shipped is used to estimate the shipping fee.

C) Paul (6,356,838) which discloses various rating structures that a flat fee per mile or a flat fee per trip for transporting shipments.

D) Altendahl et al (6,571,213) which disclose prorating the cost of a shipment of a consolidated shipment of parcels among each of the parcels in the consolidated shipment.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cosimano whose telephone number is (703) 305-9783. The examiner can normally be reached Monday through Thursday from 7:30am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss, can be reached on (703)-308-2702. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

10.1 The fax phone number for UNOFFICIAL/DRAFT FAXES is (703) 746-7240.

10.2 The fax phone number for OFFICIAL FAXES is (703) 872-9306.

10.3 The fax phone number for AFTER FINAL FAXES is (703) 872-9306.

11/01/04



Edward R. Cosimano
Primary Examiner A.U. 3629